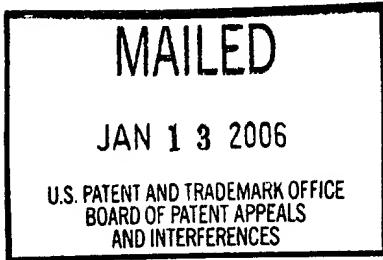


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte J. KEITH KELLY and PETER STUART EDMONDSON



Appeal No. 2005-1888  
Application No. 09/373,576

ON BRIEF

Before FRANKFORT, McQUADE, and BAHR, Administrative Patent Judges.  
McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

J. Keith Kelly et al. appeal from the final rejection (mailed October 7, 2003) of claims 1-16 and 18-30, all of the claims pending in the application.

THE INVENTION

The invention relates to "a method and apparatus for identifying an appropriate gardening or agricultural material based on responses to user queries" (specification, page 1). Representative claims 1, 13 and 26 read as follows"

Claim 1. A method for identifying a gardening material comprising:

querying a user for at least one geographic region;  
receiving the at least one geographic region from the user;  
querying the user for the location of a gardening problem within said geographic region;  
receiving the at least one gardening problem from the user;  
querying database and generating a series of questions in response to the received at least one gardening problem;  
receiving a response to the series of questions from the user;  
querying the database and identifying at least one gardening material based upon a response to at least one of the querying.

Claim 13. A system for identifying a gardening material, the system comprising:

a storage device for storing a database of gardening material;  
a user input/output device; and  
a processor connected to the storage device and the user input/output device, the processor being configured to perform the steps of:  
presenting a user with at least one inquiry via the user input/output device;  
identifying at least one gardening material based upon a response to said inquiry;  
wherein at least one inquiry is directed toward the user's geographic region and the at least one gardening material is identified based at least partially upon the user's geographic region.

Claim 26. A method for identifying a garden material comprising:

querying a user for a geographic region in which the garden material is to be utilized;  
receiving the geographic region from the user;  
querying the user for an object affected by the gardening problem, wherein the object affected by the gardening problem includes at least one of flowers, vegetables, lawn, fruits, trees/shrubs, pets, homes, and pools/spas;  
receiving the object affected by the gardening problem from the user;

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querying the user for a type of gardening problem, wherein the type of garden problem includes at least one of pests, fertilizer need, and information pertaining to seeds;  
receiving the type of gardening problem from the user;  
determining whether the type of gardening problem is a pest problem, fertilizer need problem, or information pertaining to seeds; and  
generating a list of products based partially upon the geographic region.

#### THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

Sturgeon et al. 5,726,884 Mar. 10, 1998  
(Sturgeon)

Sullivan et al. 6,477,531 Nov. 05, 2002  
(Sullivan)

Gerland et al., "Taking a Spade to the Web," Buffalo News, April 7, 1998 (Gerland)

"Buyer's Guide '99," The National Gardening Association Home Page, <http://web.archive.org/web/19990128180853/http://www2.garden.org/> (National Gardening)<sup>1</sup>

#### THE REJECTIONS

Claims 1, 2, 4, 8-11, 13-15, 21-24 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sullivan in view of Gerland and National Gardening.

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<sup>1</sup> It is not disputed that the National Gardening reference is prior art with respect to the subject matter recited in the appealed claims.

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Claims 3, 12, 16, 25 and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sullivan in view of Gerland, National Gardening and Official Notice.

Claims 5-7, 18-20 and 28-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sullivan in view of Gerland, National Gardening and Sturgeon.

Attention is directed to the main and reply briefs (filed July 20, 2004 and October 8, 2004) and answer (mailed August 10, 2004) for the respective positions of the appellants and examiner regarding the merits of these rejections.

#### DISCUSSION

Sullivan, the examiner's primary reference, discloses an automated technical support system and method for diagnosing and solving hardware and software problems on a client machine 10 connected to a web server platform 12 by a communication channel 14 (see Figure 1). As described by Sullivan,

[t]he method begins in response to entry by a user of a problem [area] and description. During a guided self-help session, the user is presented with active content, for example technical support information that may be

"activated" via a diagnostic map. A given diagnostic map encapsulates a set of one or more methods that, upon execution, explore[s] the user's machine and gathers diagnostic data. The active content is useful to facilitate diagnosis or self-repair during the self-help session [Abstract].

With regard to the particular manner in which the user interacts with the server, Sullivan further explains that

[w]hen the user desires technical support, a technical support interface is launched. The user is then prompted to select a general problem area. In response to a user query, the system automatically serves a self-help home page, (or template) to the user's interface. Preferably, the interface has a Web browser navigation metaphor to provide the user with a comfortable and intuitive interaction with the self-help system [column 2, lines 48-55].

As conceded by the examiner (see page 5 in the answer), Sullivan does not respond to the many limitations in independent claims 1, 13 and 26 relating to gardening. Indeed, on its face the Sullivan reference has little apparent relevance to the subject matter recited in the appealed claims. The examiner's reliance on Gerland and National Gardening to overcome this basic evidentiary deficiency is not well founded.

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The Gerland article briefly describes a number of gardening Web sites which allow a user to submit questions to a horticulturist, read gardening tips and information, view videos and/or order garden supplies and catalogs.

The National Gardening home page permits a user to access weekly gardening reports and tips in response to the input of a particular geographic region.

In rejecting independent claims 1, 13 and 26, the examiner submits that it would have been obvious in view of Gerland

to modify Sullivan to include the features of gardening sites such as resolving gardening problems, [and] placing online orders for gardening material. Doing so would enable customers to use Sullivan's method and system to resolve gardening problems, [and] place online orders for gardening material, as explicitly disclosed in Gerland [answer, page 5],

and further in view of National Gardening

to modify Sullivan/Gerland to include the feature of user informing a geographical region upon being prompted by the processor. Doing so helps the processor to respond with relevant information related to that region only [answer, page 5].

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The collective disclosures of Sullivan, Gerland and National Gardening, however, would not have furnished the artisan with any motivation or incentive to modify Sullivan's automated technical support system in such a fundamental manner. The only suggestion for selectively combining the widely disparate teachings of Sullivan on the one hand and Gerland and National Gardening on the other hand stems from hindsight knowledge impermissibly derived from the appellants' disclosure.

Hence, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claims 1, 13 and 26, and dependent claims 2, 4, 8-11, 14, 15 and 21-24, as being unpatentable over Sullivan in view of Gerland and National Gardening.

As the examiner's application of Sturgeon and Official Notice do not cure the shortcomings of Sullivan, Gerland and National Gardening relative to the subject matter recited in parent claims 1, 13 and 26, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of dependent claims 3, 12, 16, 25 and 27 as being unpatentable over Sullivan in view of Gerland, National Gardening and Official Notice, or the standing 35 U.S.C. § 103(a) rejection of dependent claims 5-7, 18-20 and 28-30 as

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being unpatentable over Sullivan view of Gerland, National  
Gardening and Sturgeon.

SUMMARY

The decision of the examiner to reject claims 1-16 and 18-30  
is reversed.

REVERSED

*Charles E. Frankfort*

CHARLES E. FRANKFORT )  
Administrative Patent Judge )  
 )  
 )

*John P. McQuade*

JOHN P. MCQUADE )  
Administrative Patent Judge )  
 )  
 )

*Jennifer D. Bahr*

JENNIFER D. BAHR )  
Administrative Patent Judge )  
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